

Internal Revenue Service
memorandum

CC:INTL-667-88
Br5:BFelker

date: DEC 13 1988
to: Jim Marcinski, Cleveland Appeals
from: Barbara Felker, CC:INTL:Br5 *BAF*

subject: [REDACTED]: CFC LIFO Elections

A copy of the December 1965 article by Stanley Weiss I mentioned, concerning computation of earnings and profits for purposes of the deemed paid foreign tax credit, is enclosed. See comment on page 853 suggesting that, in the absence of an election to use the section 964 rules, strict conformance to domestic rules is required under section 902, and that in the absence of procedural rules allowing for tax elections foreign corporations may be precluded from using certain accounting methods available to domestic taxpayers.

We understand that the taxpayer argues that U.S. tax concepts govern the computation of accumulated profits with respect to substantive tax concepts but not administrative or procedural rules, citing G.C.M. 36814 (August 18, 1976). G.C.M. 36814 suggested that a foreign country's loss carryover rules may be taken into account in allocating earnings deficits to accumulated profits of particular years. You might point out that this position was rejected in Rev. Rul. 87-72, holding that the allocation of deficits for section 902 purposes "is determined solely under U.S. law and is not governed to any extent by foreign law." Moreover, whereas the regulations supply detailed procedural rules for domestic corporations to make LIFO elections, no comparable rules exist to allocate deficits to specific years in computing earnings and profits of domestic corporations, since annual accumulated profits are relevant only for purposes of section 902. Accordingly, G.C.M. 36814 did not suggest that domestic procedural rules may be ignored in computing accumulated profits, but merely suggested a rule to govern a situation not addressed by regulations applicable to domestic corporations.

Please don't hesitate to call if we can be of any further assistance.

Enclosure

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